

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

TYRONE WILLIAMS and  
KELLY WILLIAMS,

Plaintiff,

v.

McCALLA RAYMER, LLC,

Defendant.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

CIVIL ACTION NO.  
1:11-CV-3664-RWS

**ORDER**

This case is before the Court for consideration of the Final Report and Recommendation [2] of Magistrate Judge Linda T. Walker. After reviewing the Report and Recommendation and Plaintiffs' Objections [5] thereto, the Court enters the following Order.

Magistrate Judge Walker recommended dismissal of this action pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i)-(ii). She concluded that Plaintiffs failed to allege any facts showing that Defendant meets the definition of "debt collector" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, et seq. Also, she found that Plaintiffs failed to set forth any facts to show that

Defendant owed them a legal duty to stop the foreclosure proceedings. In their Objections, Plaintiffs assert that the communications sent to them by Defendant state: “This is an attempt to collect a debt.” Thus, Plaintiffs argue that it is obvious that Defendant was trying to collect a debt.


A complete reading of Defendant’s letter shows that Defendant was seeking to enforce a security interest through the foreclosure process. “The FDCPA defines ‘debt collector’ as a person who uses an instrumentality of interstate commerce or the mails in a business which has the principal purpose of collecting debts, or who regularly collects debts owed to another.” Warren v. Countrywide Home Loans, Inc., 342 Fed. App. 458, 460 (11th Cir. 2009).

“[T]he FDCPA does not define ‘debt collection.’ However, the plain language of the FDCPA supports the . . . conclusion that foreclosing on a security interest is not debt collection activity for purposes of” the FDCPA generally, but is for purposes of § 1692f(6). Id. Under Section 1692f(6), a debt collector may not take or threaten to take a non-judicial action to effect dispossession of property if “(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest; (B) there is not present intention to take possession of the property; or (C) the property is exempt by law from such dispossession or disablement.” 15 U.S.C. § 1692f(6). Plaintiffs

have failed to allege facts that would support a finding that Defendant violated any of these provisions. Thus, as Judge Walker concluded, Plaintiffs failed to set forth facts to show why Defendant owed them a legal duty to stop foreclosure proceedings.

Based on the foregoing, even if Defendant is deemed to be a debt collector for purposes of § 1692f(6), Plaintiffs have failed to state a cause of action pursuant to the FDCPA. Accordingly, the Complaint is **DISMISSED** pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i)-(ii). The Clerk shall close the case.

**SO ORDERED**, this 1st day of December, 2011.

  
\_\_\_\_\_  
RICHARD W. STORY  
UNITED STATES DISTRICT JUDGE